

Ontario
Human Rights
Commission

Commission
ontarienne des
droits de la personne

Government
Publications



Ontario

CA20N

L72

- 2006



3 1761 12060950 8

P R E G N A N C Y

Before, During & After:
Know Your Rights



Published by the Ontario Human Rights Commission
Province of Ontario, Toronto, Canada

©1999, Government of Ontario

ISBN 0-7778-9010-0 9/99 1500

Disponible en français

Prepared by the Policy and Education Branch
Approved by the Commission: May 26, 1999

P R E G N A N C Y

*In Ontario it is illegal to discriminate because a woman is or was pregnant, because she may become pregnant or because she has had a baby. Under the Ontario Human Rights Code, women are protected from discrimination and harassment because of **sex**, which includes pregnancy, and **family status**, which means being in a parent-child relationship.*

A T W O R K

interviews

It is illegal for an employer to ask you, "Are you pregnant?", "Do you have a family?" or "Do you plan to have a family?" during a job interview.

on the job

It is illegal to fire you, demote you or lay you off (even with notice) because you are or may become pregnant.

In some cases, an employer may be able to show real health or safety risks related to your pregnancy, or that meeting your special needs as a pregnant woman would be excessively costly. If so, temporary adjustments to your job may be necessary. However, the employer must show that these factors are real and in your best interests: this is a very high standard.

You have a right to be treated fairly at work without discrimination, that may have a negative effect on you, because you are or may become pregnant. If you are or are planning to become pregnant, you have the right to keep your job and not be denied benefits and opportunities such as:

- being promoted;
- getting training;
- being assigned to important or more challenging projects; or
- resuming your job after your pregnancy or parental leave.

harassment

You have the right to be free from insulting comments by your employer and co-workers about yourself or your work that are related to your pregnancy. Your employer has the duty to try to ensure that the workplace is free from comments of this kind, even from clients or customers.

**your special
needs**

You may have special needs because you want to become pregnant, are pregnant or because you have just had a baby. Special needs can also arise from:

- complications because of pregnancy or childbirth;
- miscarriage;
- abortion;
- conditions which result directly or indirectly from an abortion or miscarriage;
- fertility treatments;
- a reasonable recovery time from childbirth or a stillbirth;
- breast-feeding your child; or
- bereavement.

Employers are required to help women who have special needs because of pregnancy. This is called “accommodation”.

**how your
employer
can help**

Employers should change your job duties or modify rules that affect you for the sake of your health or that of your child. This might include:

- a temporary change of work location for health reasons, at your request;
- assignment to alternate or light duties;
- a flexible work schedule to let you go to medical appointments such as doctor’s appointments, ultrasound, or treatments for infertility;

- a change in your work or shift schedule;
- giving you breaks during the work day;
- a quiet place to breast-feed. This could include allowing your caregiver to bring your baby into the workplace (subject to health and safety rules); and
- time off for special health needs because of a difficult delivery, miscarriage or abortion.

working together

Both you and your employer share the responsibility for making your job safe and secure for you and your child. If you have medical or other needs, you have the duty to explain these needs to your employer. Remember that you may be asked for information from your health care provider to show that your needs are medically supported.

If your doctor's advice is that you can't work or do certain duties, tell your employer and provide supporting medical documents from your health care provider to explain what you can and cannot do. You can suggest other ways of doing your job, or, if you cannot work at all, tell your employer how much time off you need.

Once your employer knows what your needs are, steps should be taken to meet your special needs unless they are shown to be extremely costly or present health and safety dangers.

**benefits,
pregnancy
leave &
health-related
absences**

The Supreme Court of Canada has said that pregnancy, although not an “illness,” an “accident” or a “disability”, is a valid health-related reason for being away from work.

“Health-related reasons” include:

- your physical and mental health;
- the health and well-being of your unborn baby; and
- the health and well-being of your child.

Under the *Employment Standards Act*, “pregnancy leave” is a leave of absence from work of up to 17 weeks. “Parental leave” is another leave of absence of up to 18 weeks, which both mothers and fathers can take. If you are not eligible for parental leave, however, you may be able to extend your pregnancy leave up to 23 weeks. Mothers who take parental leave generally must do so right after pregnancy leave.

Your employer cannot force you to take pregnancy or parental leave. But if you do decide to take one or both of them, you must take them at one time and cannot split them up. If you choose not to go onto pregnancy or parental leave, you may be entitled to sick or disability benefits for the period of time during which you are unable to work for health reasons.

Your employer is not required by law to pay you during pregnancy and parental leaves. However, you can apply for employment insurance benefits from the federal Employment Insurance Program for both pregnancy and parental leaves. Many employers voluntarily “top up” your salary so that you receive a higher amount than you would under employment insurance benefits alone. Check with your employer for details.

Unless you advise your employer otherwise in writing, your employer has to continue to contribute to your benefit plans while you are away on leave. These benefits include pension, life insurance, accidental death, extended health and dental plans. The only exceptions are

contributions for short and long-term disability plans, which employers are not required to pay during a pregnancy or parental leave. However, many employers do choose to continue to make payments for these plans and you should check with your employer.

As a rule, the right to receive benefits under disability plans ends when you are on pregnancy or parental leave. But if your employer offers disability benefits to employees who are off on other kinds of leave such as educational leaves or sabbaticals, then they are required by law to pay the benefits to women on pregnancy leave and parental leave. Again, you should check with your employer.

Finally, you may have health problems related to your pregnancy that force you to be away from work *before* or *after* your pregnancy leave or parental leave. You can access health benefits under a workplace sick or disability plan in this situation. However, you should check your dates of leave with the Employment Standards Branch

at the Ministry of Labour since your decision to take short or long term disability leave may affect your right to take pregnancy and/or parental leave. There are strict rules about when you are entitled to take pregnancy or parental leave and when you must notify your employer.

**other
employment
standards**

The rules about pregnancy leave, parental leave and maternity benefits are set out by the Employment Standards Branch of the Ministry of Labour and by Human Resources Development Canada.

The *Employment Standards Act* provides information regarding your right to pregnancy and parental leave. During your pregnancy or parental leave, your seniority accrues, you continue to participate in most benefit plans and your employer still has to make contributions to these benefit plans, unless you say otherwise in writing. Upon return from pregnancy or parental leave, you should return to your most recent job or a similar one if that job does not exist. Also, your employer cannot intimidate or penalize you because you are eligible for or take pregnancy or parental leave.

unionized workplaces

If you believe that you have been discriminated against and you are a union member, you can file a grievance under the collective agreement if the agreement contains human rights protections. Most provincial labour laws or collective agreements have human rights protections. Filing a grievance may be a faster way of dealing with a workplace conflict, especially if the issue involves:

- accumulating sick-leave days and vacation leave; or
- seniority issues arising from maternity leave.

If you decide to file a human rights complaint with the Ontario Human Rights Commission, the Commissioners may not accept your complaint if you could have filed a grievance but did not do so. On the other hand, if your union will not help you with your grievance or if the union is the actual source of your problem, the Commission may be more likely to deal with your complaint even though you had a right to grieve.

SERVICES, FACILITIES AND HOUSING

You have a right to use services - for example, restaurants, stores and public areas such as malls and parks - without discrimination. And you have the right to rent an apartment, or sign a lease or other contract, without discrimination.

breast-feeding You also have rights as a nursing mother. For example, you have the right to breast-feed a child in a public area. No one should prevent you from nursing your child in a public area or ask you to move to another area that is more “discreet”.

PROTECTING YOUR RIGHTS

If you believe that your rights have not been respected, you can file a human rights complaint with the Ontario Human Rights Commission.

If you are a union member, please speak with your shop steward or union representative and see if you can file a grievance before you file a human rights complaint.

If you think your employer has not followed the rules under the *Employment Standards Act*, you can call or visit the nearest Ministry of Labour office and get advice on your own situation.

If your employer has not followed the *Employment Standards Act*, you can file a complaint under that Act. Check with the Ministry of Labour before filing a complaint with the Commission.

If you decide that the Commission is the best place for you to file a complaint, remember that your complaint should be filed within six months of the most recent incident. Otherwise, the Commission may decide not to deal with the matter unless the delay is for a good reason and does not prevent the person against whom the complaint is filed from defending him or herself in the human rights complaint.

FOR FURTHER INFORMATION

For more information about this document and the Ontario Human Rights Commission, please call 1-800-387-9080 (toll free) (TTY 1-800-308-5561) or in Toronto (416) 326-9511 (TTY (416) 314-6526),

during regular office hours from Monday to Friday.
You can also visit our Web site at www.ohrc.on.ca.

A more detailed version of this document, entitled *Policy on Discrimination Because of Pregnancy*, is also available.

For detailed information about pregnancy leave and the *Employment Standards Act*, you can also contact the Employment Standards Branch of the Ministry of Labour at <http://www.gov.on.ca/LAB/es/ese.htm> or call toll free province-wide at 1-800-531-5551. For information about maternity benefits, contact Human Resources Development Canada at <http://www.hrdc-drhc.gc.ca/insur/claimant/201017.shtml> or call 1-800-277-9914 for service in English.

This document is available in alternative formats on request, including large print and audiocassette.
Ce document est aussi disponible en français.



Ontario

Ontario Human Rights Commission
180 Dundas Street West, 8th floor
Toronto, Ontario, M7A 2R9
www.ohrc.on.ca